

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MAHFOOZ AHMAD, :
Plaintiff, :

-against- :

COLIN DAY, et al., :
:

Defendants. :

-----X

GABRIEL W. GORENSTEIN, United State Magistrate Judge

In an Opinion and Order issued today, this Court denied defendants' motion to compel arbitration (Docket # 24). Plaintiff's opposition to this motion mentions various claims not included in plaintiff's complaint and requests "that if the court believes that plaintiff complaint [sic] is not sufficient court [sic] should permit the pro se plaintiff to amend his complaint." (Docket # 54 at 19). While we make no determination regarding the sufficiency of the complaint, we note that plaintiff is not required to seek permission from the Court to file an amended complaint at this time. Under Rule 15(a) of the Federal Rules of Civil Procedure, a plaintiff may file an amended pleading within 21 days of the filing of a "responsive pleading," or within 21 days of "service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Neither of these events has yet occurred, however. Defendants responded to the complaint only with a motion to compel arbitration. Such a motion is not a "pleading," see Fed. R. Civ. P. 7(a), and was not brought under Fed. R. Civ. P. 12 (see Docket # 24).

To ensure the orderly progress of this case, the Court directs that if plaintiff intends to file an amended complaint, he shall do so by September 10, 2021. If the amended complaint adds claims other than those of employment discrimination, defendants are free to make another motion to compel arbitration (returnable before the undersigned) if they wish. If plaintiff adds no new claims, however, they must either file an answer or a motion to dismiss (returnable before Judge Torres) within 21 days of the filing of any amended complaint.

If plaintiff does not intend to file an amended complaint, he shall file a letter by September 10, 2021, so stating. In such event, defendants shall file any answer or motion to dismiss (returnable before Judge Torres) with respect to the existing complaint within 21 days of the filing of the letter.¹

If defendants seek to continue the stay of discovery, they shall file any such motion (returnable before the undersigned) at the time they file any motion to compel arbitration or

¹ If defendants file an answer or a motion under Rule 12(b), (e), or (f) in response to any amended complaint (or the existing complaint), plaintiff will still be free to file an amended complaint without court order as long as he does so within 21 days of the defendants' filing.

motion to dismiss. Any motion to stay may incorporate by reference papers filed in support of any motion to dismiss or motion to compel arbitration.

SO ORDERED.

Dated: August 20, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Gabriel W. Corenstein", is written over a horizontal line.

GABRIEL W. CORENSTEIN
United States Magistrate Judge